

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CERTIFIED WELDING & PRODUCTS, INC.

and

Case 7--CA--31411

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL--CIO.

July 17, 1991
DECISION AND ORDER

By Chairman Stephens and Members Cavanaugh and Quinn
Upon a charge filed by the International Union, United Automobile,

Aerospace and Agricultural Implement Workers of America (UAW), AFL--CIO, on January 18, 1991, the General Counsel of the National Labor Relations Board issued a complaint on March 11, 1991, against Certified Welding & Products, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.¹

On May 13, 1991, the General Counsel filed a Motion for Default Summary Judgment. On May 20, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ The Respondent's failure to claim certified mail does not defeat the purposes of the Act. Fletcher Oil Co., 299 NLRB No. 77 fn. 2 (Aug. 23, 1990).

Ruling on Motion for Default Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the regional attorney by letter dated March 27, 1991, notified both the Respondent and the Respondent's resident agent that unless an answer was received by April 10, 1991, a Motion for Default Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a Michigan corporation, has been engaged in the business of providing metal fabrication, welding and cutting services at its facility in Roseville, Michigan, the only facility involved in this proceeding. During the year ending December 31, 1990, the Respondent, in the course and conduct of its business operations, purchased and caused to be transported and delivered to its Detroit, Michigan place of business steel and other goods and materials valued in excess of \$50,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its place of business in Roseville, Michigan, directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce

within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit and the Union's Representative Status

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees employed by Respondent at its 28336 Hayes, Roseville, Michigan facility; but excluding all technical employees, professional employees, office clericals, guards and supervisors as defined in the Act.

Since at least 1975, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and has been recognized as such in successive collective-bargaining agreements with the Respondent. The most recent agreement is effective by its terms from August 1, 1988, to August 1, 1992.

At all times material, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of employees in the unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

B. Refusal to Bargain

The most recent collective-bargaining agreement between the Respondent and the Union contains, inter alia, provisions for notice to employees before their layoff, continuation of insurance coverage for employees, vacation pay, grievance-arbitration procedures, profit sharing and payment for unused personal or sick days. Since about November 2, 1990, and continuing to date, the Respondent has failed and refused to continue in full force and effect all the terms of the collective-bargaining agreement by, inter alia, failing to: give notice of layoff to employees; continue employee insurance coverages;

accept or process grievances; and pay profit sharing, vacation pay, and personal or sick day pay. The Respondent engaged in this conduct, notwithstanding that previous written notice of the proposed termination of the agreement was not served on the Union.

On or after November 2, 1990, the Respondent closed its business operations at the Roseville facility without prior meaningful notice to the Union and since about November 2, 1990, the Respondent has failed and refused to bargain with the Union over the effects of that closing on unit employees.

About the week of November 22, 1990, the Respondent, acting through General Manager Andy Knaack at the Roseville facility, bypassed the Union and dealt directly with its employees in the unit by offering to have employees' unpaid vacation pay paid if the employees were willing to work for the other company and by asking employees if they were willing to return to work for the Respondent without representation by the Union.

By letter of January 11, 1991, the Union requested that the Respondent furnish it with certain information concerning unit employees which was necessary for, and relevant to, the Union's performance of its function as the exclusive bargaining representative of the unit employees. Since about January 11, 1991, and continuing to date, the Respondent has failed and refused, and continues to fail and refuse, to furnish the Union with the requested information.

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and has interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights. Accordingly, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By laying off employees without notice, by failing to continue employee insurance coverages, by failing to accept or process grievances, by failing to pay profit sharing, vacation pay, and personal or sick day pay, all contrary to the terms of the Respondent's collective-bargaining agreement with the Union, by refusing to bargain over the effects of the closing of the Roseville facility, by refusing to furnish to the Union the relevant information it requested, and by bypassing the Union and dealing directly with its employees, the Respondent has failed to bargain collectively and in good faith with the representative of its employees and has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to continue in full force and effect its collective-bargaining agreement and to make whole unit employees for its failure to adhere to the terms of that agreement relating, inter alia, to continuation of insurance coverages, accepting or processing grievances, and paying profit sharing, vacation pay, and personal or sick day pay. The Respondent shall also reimburse its unit employees for any expenses ensuing from the Respondent's unlawful failure to make these payments as set forth in Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987).

We shall also order the Respondent to bargain on request with the Union over the effects of the closing of its Roseville, Michigan facility and the layoff of unit employees.

We shall further order the Respondent to provide the Union with the requested information necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of unit employees.

With respect to the Respondent's unlawful failure to bargain with the Union over the effects of the Respondent's termination of operations and layoff of unit employees, the bargaining unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and at a time when a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union representing its employees on request about the effects of the closure on unit employees, and we shall accompany the Order with a limited backpay requirement designed both to make the employees whole for the losses suffered as a result of the Respondent's failure to bargain and to recreate in some practicable manner a situation in which the parties bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so in this case by requiring the Respondent to pay backpay to its employees in a manner similar to that required in Transmarine Corp., 170 NLRB 389 (1968). We shall order the Respondent to pay employees in the unit backpay at the rate of their normal

wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following events: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing on the unit; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith. In no event shall the sum paid to any of the employees in the unit exceed the amount the employees would have earned as wages from the date on which the Respondent terminated its Roseville, Michigan operations to the time they secured equivalent employment elsewhere, or the date the Respondent shall have made a bona fide offer to bargain, whichever occurs sooner; provided, however, that in no event shall the sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Interest on all sums shall be paid in the manner prescribed in New Horizons for the Retarded, supra.

To remedy the Respondent's failure to process grievances, we shall order it to process the grievances it failed to accept and process.

ORDER

The National Labor Relations Board orders that the Respondent, Certified Welding & Products, Inc., Roseville, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL--CIO, over the effects on unit

employees of the closing of its Roseville, Michigan facility and the layoff of unit employees.

(b) Failing and refusing to continue in full force and effect all the terms and conditions of employment of its collective-bargaining agreement with the Union by, inter alia, failing to: give notice of layoff to employees; continue employee insurance coverages; accept or process grievances; and pay profit sharing, vacation pay, and personal or sick day pay.

(c) Failing and refusing to furnish the Union with requested information that is necessary for and relevant to the Union's performance of its function as the exclusive bargaining representative of the unit employees.

(d) Bypassing the Union and dealing directly with unit employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL--CIO, as the exclusive representative of the employees in the following appropriate unit:

All employees employed by Respondent at its 28336 Hayes, Roseville, Michigan facility; but excluding all technical employees, professional employees, office clericals, guards and supervisors as defined in the Act.

(b) On request, meet and bargain with the Union with respect to the effects of the closing of the Respondent's Roseville, Michigan facility and the layoff of unit employees.

(c) Give full force and effect to the collective-bargaining agreement with the Union and make whole unit employees for the Respondent's failure to

adhere to the terms of that agreement relating, inter alia, to continuation of insurance coverages, accepting or processing grievances, and paying profit sharing, vacation pay, and personal or sick day pay, in the manner set forth in the remedy section of this decision.

(d) On request, process the grievances that the Respondent refused to accept and process.

(e) On request, furnish the Union with information that the Respondent has failed to furnish and that is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the bargaining unit employees.

(f) Pay the unit employees laid off or discharged on the date the Respondent closed its Roseville, Michigan facility their normal wages, plus interest, for the period set forth in the remedy section of this decision.

(g) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(h) Post at any facility it may still have in Roseville, Michigan, and mail to the Union and to all unit employees who were employed at its Roseville, Michigan facility a copy of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted and shall be mailed to the Union and to all unit employees. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(i) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

July 17, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

Clifford R. Oviatt, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the representative of our employees with respect to the effects of the closing of our Roseville, Michigan facility and the layoff of unit employees.

WE WILL NOT fail and refuse to continue in full force and effect the terms of our collective-bargaining agreement and WE WILL NOT fail to give notice of layoffs, continue insurance coverages, accept or process grievances, and pay profit sharing, vacation pay, and personal or sick day pay as required by our collective-bargaining agreement.

WE WILL NOT fail and refuse to furnish information requested by the Union that is necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT bypass the Union and deal directly with unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL--CIO, as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All employees employed by us at our 28336 Hayes, Roseville, Michigan facility; but excluding all technical employees, professional employees, office clericals, guards and supervisors as defined in the Act.

WE WILL, on request, bargain with the Union with respect to the effects of the closing of our Roseville, Michigan facility and the layoff of unit employees.

WE WILL continue in full force and effect our collective-bargaining agreement with the Union and make whole unit employees for our failure to adhere to the terms of that agreement relating, inter alia, to continuation of insurance coverages, accepting or processing grievances, and paying profit sharing, vacation pay, and personal or sick day pay.

WE WILL, on request, process the grievances that we refused to accept and process.

WE WILL, on request, furnish the Union with information necessary for and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL pay unit employees laid off or discharged on the date we closed our Roseville, Michigan facility their normal wages, plus interest, for a period required by the Decision and Order.

CERTIFIED WELDING & PRODUCTS, INC.

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226-2569, Telephone 313--226--3219.